

# International Union of Operating Engineers

LOCALS 542, 542-RA, 542-C, 542-D

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October 3<sup>rd</sup>, 2012

Lester A. Heltzer, Executive Secretary  
National Labor Relations Board  
Room 11602 East  
109914 1h Street, N.W.  
Washington, DC 20570-0001

Dear Executive Secretary Heltzer;

Attached, is a Complaint I received today while at the Union Hall. This Complaint is a direct violation to Cases 4-CA-33330 et al which I have argued in letters to the Board and General Counsel that just this one Case (4-CA-069822) alone, no Compliance by the Employer has been met.

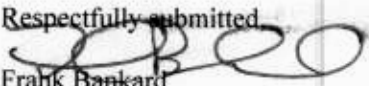
Simply, how on God's green earth can Compliance be closed in December of 2011, while the Employer committed another unlawful Act in September of setting wages and conditions without bargaining with the Union? This Charge was fully filed and documented well before the close of compliance by the Region.

Unequivocally, no clean hands have ever been met by the Employer and therefore, no Compliance has never been met in Cases 4-CA-33330-et al. Therefore, Compliance needs to be remanded back to the Region for not enforcement at this time, but to be held in abeyance until a remedy of Charge 4-CA-069822 is found. At this time, no conclusion of Law has been found regarding this Charge, although, two Formal Settlement Cases have been further signed by the Employer from 2009 to 2011 for violations of this regard as well. This Charge should be sent to the Division of Contempt for now violating two Formal Settlement Agreements, a Board Order and a Federal Court Order!

Whether Case 4-CA-069822 is found in violation to the ACT by an Administrative Law Judge or not is not relevant in regards to the close of Compliance. Simply, the Region error in closing Compliance knowing a Charge of setting wages and conditions of employment was being investigated without conclusion.

I further ask this Office to seek Contempt on Charge 4-CA-069822 for violation of the original Board Order of 4-CA-33330 et al, two Formal Settlement Agreements which both were opposed by the Union and a smack in the Face to the Federal Court Order for enforcement of the Board Order.

Respectfully submitted,

  
Frank Bankard

Cc: Lafe Solomon Acting General Counsel NLRB  
Dorothy Morre-Duncan (Region 4)  
John Nadler (Reed Smith)

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

HANSON AGGREGATES BMC, INC.

and

Case 4-CA-069822

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 542, AFL-CIO

**COMPLAINT AND NOTICE OF HEARING**

International Union of Operating Engineers, Local 542, AFL-CIO, herein called the Union, has charged that Hanson Aggregates BMC, Inc., herein called Respondent has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*, herein called the Act. Based thereon, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Union on November 30, 2011, and a copy was served by first class mail on Respondent on December 2, 2011.

2. (a) At all material times, Respondent, a Delaware corporation with a quarry in Penns Park, Pennsylvania, herein called the Quarry, has been engaged in extracting and processing crushed stone and manufacturing bituminous asphalt.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), sold and shipped goods valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, R. Jeffrey Carey has been Respondent's Manager of Labor Relations, and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees of Respondent at the Quarry, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Mechanics, Welders and maintenance employees, excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act.

(b) On September 9, 2004, in Case 4-RC-20874, the Union was certified as the exclusive collective bargaining representative of the Unit.

(c) At all times since September 9, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

6. (a) On September 8, 2011, Respondent curtailed its operations at the Facility due to a weather emergency.

(b) On or about September 9, 2011, Respondent implemented a plan to compensate Unit employees for September 8, by paying one hour "show up" pay for certain employees; assessing an accrued vacation day for certain employees, and not paying other employees.

(c) The subject set forth above in subparagraph (b), relates to wages, hours and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

(d) Respondent engaged in the conduct described above in subparagraph (b), (1) without affording the Union an opportunity to bargain with Respondent with respect to this conduct, and (2) absent overall impasse in bargaining for a collective bargaining agreement as a whole.

7. By the conduct described above in paragraphs 6(b) and 6(d), Respondent has been failing and refusing to bargain collectively with the exclusive collective bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

8. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Consolidated Complaint. The Answer must be **received by this office on or before October 11, 2012, or postmarked on or before October 10, 2012**, unless filed electronically in a pdf format, Respondent should file an original and four copies of the Answer with this Regional Office.

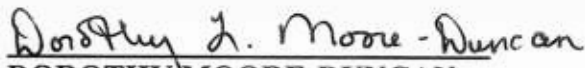
An Answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at <http://www.nlr.gov>, click on the *File Case Documents* icon and then follow the detailed instructions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than two (2) hours after 12:00 noon (Eastern Time) on the due date for the filing, a failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an Answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If the Answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of the Answer to a Complaint is not a pdf file containing the required signature, then the E-filing rules require that such Answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the Answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The Answer may **not** be filed by facsimile transmission. If no Answer is filed, or if an Answer is untimely filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

#### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that at **10:00 a.m.** on **December 4, 2012**, and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board at a place to be designated later. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed at Philadelphia, Pennsylvania this 27<sup>th</sup> day of September, 2012.

  
**DOROTHY MOORE-DUNCAN**  
Regional Director, Fourth Region  
National Labor Relations Board